

**Subject:** Re: WPH: Response to May 16 email

**Date:** Friday, June 9, 2017 at 4:40:57 PM Pacific Daylight Time

**From:** Zeppetello, Marc@BCDC

**To:** David Smith

**CC:** Mark L. Sanders - (mark@westpointharbor.com), McCrea, Brad@BCDC, Trujillo, Matthew@BCDC, Zeppetello, Marc@BCDC

David,

To follow up on our discussions, I am replying to your questions regarding BCDC's jurisdiction with respect to Mr. Sanders' request to install gates in the temporary fence of the Phase 3 building sites pursuant to Amendment Seven, as well as to the request itself.

At the outset, and as previously discussed, BCDC staff has agreed to authorize one gate for emergency access purposes (as well as access to utilities) at the western corner of the site, near the entrance/exit to the marina. This authorization can be provided via plan review, and I address below the additional information we need concerning this gate to provide such approval. Thus, the focus of the following discussion is on the request for two additional gates — a 12-foot gate capable of allowing vehicle access at the south-easterly portion of the fencing, and a 4-foot gate adjacent to the gangway for the transient dock — that would both be used, according to your May 22 email, by local police and fire departments and USGS to provide access to certain docks for personnel and equipment for training and perhaps other purposes.

Turning to the jurisdictional issues, a permit from BCDC is required not only for the placement of fill but also "to make any substantial change in use of any water, land or structure within the area of the commission's jurisdiction." Govt. Code 66632(a). Moreover, BCDC's regulations define "substantial change in use" to include (but not be limited to): (1) a change in the general category of use; and (2) any activity that adversely affects existing or future public access shown on any Commission permit. 14 CCR 10125 (b). Consistent with these statutory and regulatory authorities, almost every provision in the authorization section of the BCDC permit for Westpoint Harbor includes the word "use" (e.g., authorization to "create, use, and maintain;" "install, use, and maintain;" "construct, use, and maintain").

The BCDC permit authorizes use of the Phase 3 building sites for future commercial/retail buildings, public boardwalks, and landscaping, but does not authorize any interim (*i.e.*, current) use of these areas. However, the requested gates would allow these Phase 3 areas to be used for a new category of use: access for police, fire and USGS personnel, vehicles, and equipment. It is not clear from the request, but it appears likely that such use may also involve these agencies parking vehicles and/or trailers and perhaps temporarily storing equipment in the Phase 3 areas, inside the fence, which is also a new category of use. In addition, the installation of gates to allow access for these purposes would adversely affect existing required public access by creating access points and an associated unapproved driveway and path across the Phase 1B public path and landscaping. On this last point, we disagree with Mr. Sanders' claim that the landscaping that would be impacted by the requested 12-foot gate at the south-easterly portion of the fencing and by the 4-foot gate would be Phase 3 landscaping. The 2012 unapproved landscaping plan prepared by KSDG, which includes the location of temporary fencing as authorized by Amendment Seven, was for Phase 1B landscaping; the permit requires additional Phase 3 landscaping within the envelope of the Phase 3 building sites.

For all of these reasons, installation of the additional gates to allow access to and interim use of the Phase 3 areas by police, fire and USGS public agency personnel, vehicles, and equipment, as described in the request, would be a substantial change of use and, therefore, requires authorization by an amendment to the permit. In addition to authorizing the gates, the amended permit would specify the terms of use (*i.e.*, frequency, duration, and whether vehicle parking would be allowed inside the temporary fencing, etc.) and might also require mitigation or some other measure to compensate for impacts on existing required public access. If Mr. Sanders would like to seek such authorization, he may do so by submitting a request to amend the permit with supporting information. At this time,



BCDC staff will not authorize the two additional requested gates under Amendment Seven or by plan review.

With respect to the gate requested only for purposes of emergency access and access to utilities, please provide the following information for plan review of this gate: (1) please describe the proposed location of the gate by reference to a distance and direction (or bearing) from a reference location, such as from the intersection of Seaport Boulevard and the roadway into and out of the marina; (2) provide a recently dated photograph showing the proposed location of the gate from the described reference location; (3) provide an annotated copy of the site plan that shows the authorized location of the temporary fence — the site plan attached to BCDC's May 9th letter and also attached to your May 22 email — indicating the location of the proposed gate (but not all three requested gates); (4) please provide the dimensions of the gate, describe the construction materials, color, method of operation (*i.e.*, would the gate open in, or out, or would the gate retract laterally?), and any other specifications (*i.e.*, would the gate be one piece or two sections?).

Thanks, Marc

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**From:** David Smith <[dsmith@sticeblock.com](mailto:dsmith@sticeblock.com)>  
**Date:** Monday, May 22, 2017 at 4:18 PM  
**To:** Marc Zeppetello <[Marc.Zeppetello@bcdca.gov](mailto:Marc.Zeppetello@bcdca.gov)>  
**Cc:** "Mark L. Sanders - ([mark@westpointharbor.com](mailto:mark@westpointharbor.com))" <[mark@westpointharbor.com](mailto:mark@westpointharbor.com)>  
**Subject:** WPH: Response to May 16 email

Marc,

On Friday I sent you an update regarding efforts to retain a contractor to construct the temporary fence around the Retail Area at Westpoint Harbor. Here, I wanted to provide updates on the remaining items referenced in your May 16 email responding to our submission of the executed Amendment 7 and related representations you requested.



## **Gates**

Thank you for your openness to further discuss this matter and the express accommodation of one gate for emergency access purposes. You requested further description of fire and police authorities' access through the area. Here are some additional details, per Mark:

### Redwood City Police Department

The police boat is moored on P dock. Their patrol responsibility is the South Bay and Bay Bridge and they go out every week or two. The officers sometimes drive right to the gate for fast access, and their service vehicles (Redwood City maintenance, mechanics) drive to the gangway to load and unload equipment such as welders, pumps etc.

### Redwood City, Menlo Park Fire Departments

The fire department also moors a fire boat on P dock and do lots of training (with plenty of time due to the nature of their work whereas the police do not). Firemen train almost every day and regularly move gear back and forth to the gangway. Typically two trucks and 3-4 people are here and they both walk and drive to the gangway. Maintenance and service crews also drive to the gangway.

### US Geological Survey

USGS brings survey vessels into the harbor a few weeks at a time, and service vehicles normally drive to P dock with gear.

The fire and police boats initially berthed on A dock but moved to the transient dock over concerns about disturbing neighbors and hitting vessels with their boats while training. Other agency vessels like the Coast Guard also use N and P docks.

### Utilities

Utilities for the harbor run through the fenced area and are regularly serviced by PG&E, RWC Public Works and harbor workers, as follows:

- 12" water main. Two backflow preventers and two water meters are in a large vault and read monthly. They must be tested and recertified annually. Cathodic protection test boxes are periodically read (there is one for every valve because of the salt-water environment and co-located with the valves). And when a water leak or break occurs, water is shut off at these valves to effect repairs, and access is essential.
- Electric service. All electric service runs through the fenced area. Two large (12,000 volt) transformers with fuses, two switch panels, and multiple vaults (3'x4' boxes for access). Access is frequent to turn circuit breakers on and off for the docks, street lights, Wifi and other services.
- Communications. Just like electric service, we have 400 AT&T lines through the fenced area with multiple vaults for access and repair.
- Sewer. The sewer connection runs from the secondary road access north of the main entrance to the harbor, and goes diagonally across the fenced area with shutoff valves and cathodic protection.



Relative to servicing these utilities, the City of Redwood City and PG&E hold access easements over the area granting them access rights for their equipment.

As a general proposition, the utilities infrastructure are along the western boundary of the Retail Area, while the most direct access pathway for entities accessing the transient dock is along the eastern boundary. As you know, the Retail Area remains unimproved. When the site receives rain, the mud is quite deep, making traversing of the area difficult, if not impossible (i.e., vehicles becoming stuck in the mud). Thus, we originally requested, and are renewing the request, for access points at both the south-westerly and south-easterly portions of the fencing with gates. These would be 12-foot-wide gates capable of allowing the respective service vehicles access to their area of interest. Additionally, we are requesting a 4-foot-wide gate directly adjacent to the gangway for the transient dock for access to the vehicles as explained above. As you requested, the proposed locations for the requested gates are shown in the attached exhibit.

There are no business activities in the fenced area and the gates will be locked with service access as described above only.

I would also like to add, Marc, with all due respect, I'm not entirely clear where the jurisdictional line of BCDC relative to this discussion begins and ends. Staff shared its position that installation of a fence constitutes "fill" under BCDC's regulations, thus requiring a permit amendment. We requested and you have granted such an amendment. (Again, thank you for your and the involved staff members for your assistance in that regard.) However, it is unclear to me why a gate in a fence is a different issue of "fill" than the fence itself.

Additionally, your email states that there are "no uses authorized in Phase 3 building sites." BCDC is not suggesting that until the ultimate uses authorized in the permit are realized, the area must remain untouched and fallow, is it? Was the installation of utility infrastructure a violation of BCDC authority? Is the access for purposes of maintenance a violation of the permit? Unless I'm mistaken, the area has been used for staging landscaping materials utilized elsewhere on the site. Disallowed?

I don't mean to be provocative or make this matter more difficult, Marc, please believe me. I do, however, have genuine reservations here. I've very much appreciated the open, candid exchange we've all enjoyed of late in trying to identify and propose resolutions for outstanding concerns related to permit compliance, and I look forward to it continuing.

The fact is that BCDC's rights and authorities to inspect the site, including the Retail Area pre- and post-fencing will remain what they have always been. We readily concur that uses implicating BCDC jurisdiction not authorized in the permit are not allowed, with or without fencing and with or without gates. But that does not mean there are no uses to which the area may be put. Said another way, respectfully, not every use to which the area may be put necessarily implicates BCDC jurisdiction. And, as noted, BCDC will retain all authorities under the permit to inspect and ensure no such activities are taking place, again regardless of the presence or absence of gates in the fence.





We very much appreciate your continued consideration of this request.

### **Signs**

Yes, concurrent with the installation of the temporary fencing, unauthorized signs will be removed and Phase 1B public access paths and areas will be opened.

Yes, Mark will submit by June 6 a signage plan for review by staff inclusive of the noted special conditions in your email.

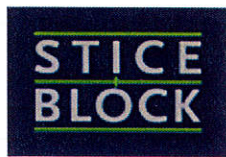
The "Members and Guests only" signs will be removed pending final resolution of the issue in the future.

### **Pacific Shores Fence**

Yes, we have been told by Pacific Shores that once the temporary fencing has been installed to the satisfaction of the City of Redwood City, they will not oppose removal of the fence between Pacific Shores Center and the Harbor, and it will be removed.

I hope I have addressed the remaining matters from your May 16 email, Marc. If not, or if we need to further discuss anything, please let me know. And as noted, we very much appreciate your continued consideration, and that of your colleagues, of the requested gates in the Retail Area fencing.

Many thanks. D.



**DAVID C. SMITH**

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